

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ROBERT LEE STINSON,

Plaintiff,

Case No. 09-C-1033

v.

THE CITY OF MILWAUKEE, THOMAS  
JACKELLEN, JAMES GAUGER, and other  
AS-OF-YET UNKNOWN EMPLOYEES OF THE  
CITY OF MILWAUKEE,

Defendants.

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**ANSWER OF DEFENDANTS CITY OF MILWAUKEE AND JAMES GAUGER**

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The defendants, the City of Milwaukee and James Gauger, by their attorneys, Grant F. Langley, City Attorney, by Assistant City Attorney Jan A. Smokowicz, as and for an answer to the plaintiff's complaint, state as follows:

1. Answering paragraphs 1, 2, the first and last sentence of paragraph 3, and paragraph 4, lack knowledge or information sufficient to form a belief as to the allegations contained therein.

2. Answering paragraphs 5 and 6, the allegations contained therein are legal conclusions to which no answer is necessary or appropriate; however, in the event that the Court deems an answer to be required, lack knowledge or information sufficient to form a belief as to the allegations contained therein.

3. Answering paragraphs 7 and 8, lack knowledge or information sufficient to form a belief as to the allegations contained therein.

4. Answering paragraphs 13, 14, 15, 16 and 19, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

5. Answering paragraphs 17, 18 and 20, deny the allegations contained therein.
6. Answering the second and third sentence of paragraph 21, lack knowledge or information sufficient so as to form a belief as to the truth of the allegations contained therein.
7. Answering the second sentence of paragraph 22, deny the allegations therein.
8. Answering the last sentence in each of paragraphs 23 and 24, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
9. Answering paragraphs 28, 29, 30, and 31, lack knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
10. Answering paragraph 32, reallege and incorporate herein by reference as though fully set forth herein these defendants' answers to each of the paragraphs of the complaint.
11. Answering paragraphs 33, 34, 35, 36, 37, 38, 39, and 40, deny the allegations contained therein.
12. Answering paragraph 41, reallege and incorporate herein by reference as though fully set forth herein these defendants' answers to each of the paragraphs of the complaint.
13. Answering paragraphs 42, 43, 44, 45, and 46, deny the allegations contained therein.
14. Answering paragraph 47, reallege and incorporate herein by reference as though fully set forth herein these defendants' answers to each of the paragraphs of the complaint.
15. Answering paragraphs 48, 49, 50, 51, 52, 53, 54, and 55, deny the allegations contained therein.
16. Answering paragraph 56, reallege and incorporate herein by reference as though fully set forth herein these defendants' answers to each of the paragraphs of the complaint.
17. Answering paragraphs 57, 58, 59, and 60, deny the allegations contained therein.

18. Answering paragraph 61, reallege and incorporate herein by reference as though fully set forth herein these defendants' answers to each of the paragraphs of the complaint.

19. Answering paragraph 63, deny the allegations contained therein.

### **AFFIRMATIVE DEFENSES**

AS AND FOR AFFIRMATIVE DEFENSES, the defendants, the City of Milwaukee and James Gauger, allege as follows:

1. As to the individual defendants sued in their individual capacities, they are entitled to qualified immunity and the City is, furthermore, then not required to indemnify them for any such claim.

2. To the extent that the plaintiff has failed to mitigate his damages, part or all of his claims are barred by his failure to mitigate his injuries.

### **JURY DEMAND**

The defendants, the City of Milwaukee and James Gauger, hereby demand a trial by jury.

WHEREFORE, the defendants, the City of Milwaukee and James Gauger, hereby demand judgment as follows:

1. Dismissal of the plaintiff's complaint on its merits, together with costs and disbursements herein; and

2. Such other and further relief as the Court may deem just and equitable.

Dated at Milwaukee, Wisconsin this 7<sup>th</sup> day of January, 2010.

GRANT F. LANGLEY  
City Attorney

s/JAN A. SMOKOWICZ  
Assistant City Attorney  
Attorneys for Defendants  
City of Milwaukee and James Gauger  
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